

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF THE TREASURY

REQUEST FOR PROPOSALS # VPSA 08-007

for

BOND COUNSEL ADVISORY SERVICES

J. BRAXTON POWELL
STATE TREASURER

Kelley Denton, VCO
Procurement Officer

NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4343.1 or against an offeror because of race, religion, color, sex, national origin, age disability, or any other basis prohibited by state law relating to discrimination in employment.

April 4, 2008

REQUEST FOR PROPOSALS

Cover Sheet

RFP #: **VPSA 08-007**
Issue Date: **April 4, 2008**
Title: **Bond Counsel Advisory Services**

Issuing State Agency: Virginia Department of the Treasury
Attn: Kelley Denton
Procurement Officer
Commonwealth of Virginia
Department of the Treasury
P.O. Box 1879
Richmond, Virginia 23218-1879

Using Agency Department of the Treasury on behalf of
Virginia Public School Authority ("VPSA")

Initial Period Of Contract: From July 1, 2008 Through June 30, 2011 With The Option To Renew For Two Additional One-Year Terms At The Option Of the VPSA And In Accordance With The Terms Noted Herein.

Sealed Proposals Will Be Received Until **1:00 p.m. on April 21, 2008** For Furnishing The **Bond Counsel Advisory Services** Described Herein.

All Inquiries For Information Should Be Directed To: Kelley Denton at kelley.denton@trs.virginia.gov or (804) 786-4741

If Proposals Are Mailed, Mail Directly To Issuing Agency Shown Above, Adding One Line To The Top Of The Address As Follows: **Proposal for Bond Counsel for the Virginia Public School Authority, RFP VPSA 08-007**. If Proposals Are Hand Delivered, Deliver To: **Proposal for Bond Counsel , RFP VPSA 08-007**, Commonwealth of Virginia, Department of the Treasury, James Monroe Building - 3rd Floor, 101 North 14th Street, Richmond, Virginia 23219, Attn: Kelley Denton.

In Compliance With This Request For Proposals And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Bond Counsel **Services** for the Virginia Public School Authority In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiations.

NAME AND ADDRESS OF FIRM:

DATE: _____

BY: _____

(Signature in ink)

NAME: _____

(Please Print)

_____ Zip Code: _____

TITLE: _____

FEI/FIN NUMBER: _____

FAX NUMBER: _____

TELEPHONE NUMBER: _____

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Commonwealth of Virginia
RFP #VPSA 08-007 for Bond Counsel Services
Due: April 21, 2008 1:00 p.m.

SECTION I: PURPOSE

The Department of the Treasury is soliciting proposals from attorneys and law firms to serve as bond counsel to the Virginia Public School Authority ("VPSA" and Purchasing Agency). Counsel will provide federal tax and other advice related to the current and any future programs regarding public finance issues related to the issuance of tax exempt or taxable bonds of the VPSA. The purpose of this Request for Proposals ("RFP") is to solicit sealed proposals from Nationally recognized bond counsel firms to establish a contract through competitive negotiations for the provision of services as bond counsel (the "Contractor") for the Virginia Public School Authority.

PROPOSAL PREPARATION AND SUBMISSION

Submission of Proposals. Written proposals responding to the needs outlined and in the manner specified in this RFP must be submitted by the deadline indicated. Proposals may be mailed or hand-delivered to the following address:

Proposal for Bond Counsel Advisory Services RFP VPSA 08-005
Commonwealth of Virginia
Department of the Treasury
James Monroe Building – 3rd Floor
101 North 14th Street
Richmond, Virginia 23219
Attn: Kelley Denton

To receive consideration, one original and twelve (12) copies of the proposal, directed to the above address, must be received in the office of the Department of the Treasury by 1:00 P.M. EST, April 21, 2008.

The offeror is responsible for inquiring about and clarifying any aspect of the RFP that is not understood. Questions should be addressed to Kelley Denton by e-mail to kelley.denton@trs.virginia.gov.

Proposals should conform to the following specifications:

The cover page of the RFP, signed by an authorized person, should be completed and returned as page one of the proposal.

SECTION II: BACKGROUND

The Virginia Public School Authority (the "VPSA") is a public body corporate and an agency and instrumentality of the Commonwealth created by the General Assembly of Virginia in 1962 for the purpose of supplementing the existing methods of financing capital projects for public schools in the counties, cities and towns of the Commonwealth of Virginia. The VPSA was established pursuant to Chapter 11, Title 22.1 of the Code of Virginia. The Code of Virginia is available at the following Internet address: <http://leg1.state.va.us/>. The VPSA consists of five citizen members appointed by the Governor, the State Treasurer, the State Comptroller and the Superintendent of Public Instruction. The Governor designates one citizen member of the VPSA as chairman. The Department of the Treasury provides staff support for the VPSA. At this time, the VPSA is responsible for several distinct borrowing programs. Below is a brief description of each of these programs:

Pooled Bond Program

The VPSA provides financing to localities through the sale of its bonds. With the proceeds of its bond issues, the VPSA purchases a "pool" of general obligation bonds from localities ("Local Issuers"). Each Local Issuer uses the proceeds for the purpose of financing capital projects for public schools. The goals of the VPSA's financing programs are to: provide market access to those communities which do not have ready access; provide low cost financing; provide flexible terms to address the financing needs of Local Issuers; and maintain the high credit quality of the VPSA in order to ensure that the lowest possible interest rates are obtained.

All local school divisions are invited to participate in the regularly scheduled pooled bond sales in the spring and fall of each year. Pooled bonds issued by the VPSA under its 1997 Resolution are secured by the payments on general obligation school bonds ("Local School Bonds") purchased by the VPSA. The Local School Bonds are required to be general obligations of the Local Issuers backed by the Local Issuer's full faith and credit pledge. Furthermore, in the event of a default of any Local School Bond, a "State Aid Intercept" provision provides for a diversion of all funds appropriated and payable to the Local Issuer by the Commonwealth to the holder of the Local School Bonds.

1997 Resolution Bonds are additionally secured by a "sum sufficient" appropriation by the General Assembly to provide the difference, if any, between the debt service due on the 1997 Resolution Bonds and the sum of (i) debt service payments made on the Local School Bonds and (ii) funds obtained from enforcement of the State Aid Intercept provision. The first source of funds for the sum sufficient appropriation is available moneys in the Literary Fund with the general fund of the Commonwealth as the secondary source. The VPSA has issued \$4,002,865,000 total principal amount of 1997 Resolution Bonds in twenty-seven series of bonds, of which approximately \$2,829,655,000 is outstanding as of April 1, 2008. Local participants in pooled bond issues have historically utilized a twenty-year level principal debt service structure. However, bonds issued under the 1997 Resolution have accommodated requests by Local Issuers for alternative amortization schedules including intermediate term and extended term maturities and level debt service structures. At this time, 1997 Resolution Bonds are the primary pooled financing vehicle for the VPSA.

Bonds issued under the 1997 Resolution have been rated AA+, Aa1 and AA+ by Fitch Ratings, Moody's and Standard & Poor's, respectively.

The coupon interest rates for the Local School Bonds are established at ten basis points above the actual rates

on VPSA's bonds. Amounts received on local school bonds in excess of that required to meet the obligations under the resolution is transferred to the General Fund of the VPSA. Costs of issuance and other administrative expenses of the VPSA are paid from the VPSA General Fund.

Literary Fund Interest Rate Subsidy Program –Periodically the General Assembly has directed the Department of Education (“DOE”) and the VPSA to provide a program for funding school construction and renovation projects through interest rate subsidies from the Literary Fund. This program is normally conducted concurrently with the pooled bond issues of the VPSA. The purpose of the program is to expedite projects on DOE’s first priority waiting list for Literary Fund direct loans by providing a Literary Loan equivalent financing through VPSA. The interest rates on Literary Fund Loans are based on a composite index and can be as low as two percent. The most recent issue for this program was October 2007 and a new issue is scheduled for April 2008.

Stand Alone Bond Program

Special Obligation School Financing Bonds have a "stand alone" security structure. Each series is secured separately and solely by the general obligation school bonds of an individual county or city. Under this program the VPSA has (i) issued publicly offered issues for Local Issuers and (ii) privately placed with institutional investors; three Qualified Zone Academy financings on behalf of two Local Issuers.

School Educational Technology Notes

The VPSA has issued School Educational Technology Notes to provide grants to school boards of various cities, counties and towns to provide for the purchase of microcomputers and multimedia microcomputers and other electronic technology equipment as well as the network infrastructure for their public schools. Seven series of Notes have been issued, five of which remain outstanding for a total of \$172,390,000. The Notes are limited obligations of the VPSA payable solely from appropriations by the General Assembly from the Literary Fund and to the extent necessary from a sum sufficient appropriation from the general fund of the Commonwealth in the event that available moneys in the Literary Fund are less than the appropriations for debt service due on the Notes.

Official Statements for the most recent Educational Technology Notes and 1997 Resolution Bonds are available upon request.

SECTION III: SCOPE OF SERVICES

A. General Requirements

VPSA expects to issue new money pooled bonds in the spring and fall of each year. It expects to undertake refunding all or a portion of earlier issues of its outstanding pooled bonds as favorable market conditions may present. In addition, VPSA expects to issue one or more issues of 5-year education technology notes each year as may be authorized/directed by the General Assembly. The selected firm will represent the interests of the VPSA in any financing or refinancing and will assist the VPSA in planning and structuring each financing.

The work of bond counsel will include but is not limited to the following:

1. Review enabling legislation and other relevant State laws.
2. Assist in developing the legal and structural framework for any bonds issues.
3. Prepare various documents necessary or appropriate to the authorization, issuance, sale and delivery of the bonds. These include resolutions for VPSA, opinions, closing certificates, federal tax forms and final bond transcript documents. The work also includes providing assistance in writing and reviewing various aspects of the preliminary and final official statement. The work may include management of the offering document throughout the review process and the incorporation of comments from the financing team. Bond counsel may be required to maintain electronic files for each offering document issued.
4. Advise VPSA on matters related to compliance with federal tax and securities laws and regulations, e.g. arbitrage, private activity, etc. in accordance with SEC Rule 15c2-12, as amended, any additional applicable rules promulgated by the SEC, and MSRB
5. Provide timely updates to and work closely with VPSA in all activities related to financing under its bond programs
6. At the request of VPSA, assist in development of or responses to legislative initiatives. Provide opinions and/or recommendations to the VPSA.
7. Advise VPSA on new developments in public finance.

SECTION IV: PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

A. GENERAL REQUIREMENTS

1. RFP Response:

Number of Copies. In order to be considered for selection, Offerors must submit a complete response for the VPSA. One (1) original and twelve (12) copies of each proposal must be submitted to the purchasing agency. The Offeror shall make no other distribution of the proposal. Additional copies may be requested.

2. Proposal Preparation:

- a. *Submission of Materials.* Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals that are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. *Clarity of Proposal.* Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. *Organization of Proposal.* Proposals should be organized in the order in which the requirements are presented in the Specific Proposal Requirements section of the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. Proposals are limited to no more than 35 pages exclusive of appendix material. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. *Single Volume.* Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- e. *Ownership of Materials.* Ownership of all data, materials and documentation originated and prepared for the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of Section 2.2-2673 of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade

secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. **The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in the rejection of the proposal.**

3. Oral Presentation:

Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the VPSA. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. Treasury will schedule the time and location of these presentations.

B. SPECIFIC PROPOSAL REQUIREMENTS:

Offerors are required to submit the following items, separated by tabs within the proposal:

TAB 1: The RFP, the RFP cover sheet and addenda, if any, completed and signed as required.

TAB 2: General Qualifications

- a. Briefly describe your firm's experience as bond counsel for tax exempt issuers with emphasis on state level bond banks or other pooled bond issuers. Provide a list of clients and/or issues where you served as bond counsel. The listing may be provided in a separate appendix. Please indicate references with name and contact information.
- b. Describe the firm's expertise with federal tax laws and regulations relating to tax-exempt financing generally. . Include the firm's internal tax counsel capabilities.
- c. Describe the firm's particular expertise with matters regarding compliance with arbitrage rebate regulations and the continuing disclosure requirements of SEC Rule 15c2-12.
- d. Describe the firm's knowledge of and experience related to the debt provisions under the Virginia Constitution.
- e. Describe the firm's procedures for keeping abreast of changes in federal and state tax, securities and municipal bond issues, including statutory and regulatory changes and judicial or administrative decisions.
- f. Provide the name and title of the individual who would be primarily responsible for this engagement. Identify the individuals who would perform the work in this

engagement and describe how their responsibilities will be assigned and managed. Please provide resumes for each person, including background and experience relevant to this engagement.

- g. Describe how the firm would approach the legal issues presented by the underlying participants and their local school bonds in such a pooled transaction. What mechanisms would be employed to ensure continued compliance with Federal tax laws related to such post closing issues private use.

TAB 3: Conflicts

- a. If your firm also serves as bond counsel to localities that participate in VPSA financings, describe how you plan to avoid any conflicts of interest.
- b. Are you representing clients in litigation with the Commonwealth or any local government or school board? If so, identify and describe each such situation.
- c. If any member of, or associate in, your firm serves on any board, commission, committee or other organization related in any way to the VPSA, identify each such affiliation or membership.
- d. Other Disclosures. Describe any investigations by governmental or authoritative bodies or disciplinary actions related to the firm or staff or disclosure of any past or pending matter that may reflect on compliance with laws or professional standards. Also, please disclose any transactions involving the firm where the tax-exempt status of any obligations was ultimately questioned, challenged, contested, or lost.

TAB 4: Plans for Providing Services

- a. VPSA is regularly involved in the refunding of interim obligations of local participants at closing. What approach would your firm take to minimize the potential problems associated with the refunding of interim obligations?
- b. Describe your general approach to providing bond counsel services and how you propose to meet the needs of the VPSA given the scope of services requested.
- c. Would a VPSA interim financing program reduce potential problems? If so, how should it be structured?

SECTION V: EVALUATION AND AWARD CRITERIA:

All proposals received will be reviewed and evaluated by an evaluation panel. The panel will recommend proposals that most closely meet the requirements of the VPSA. The following will be used in making the selection:

A. **EVALUATION CRITERIA:** Proposals will be evaluated using the following criteria:

	POINT VALUE
1. Qualifications/Experience	35
2. Plans for Providing Services – Approach for Meeting Needs of the VPSA and Understanding Scope of Work	45
3. Women and Minority-Owned Business Involvement (see Appendix B)	<u>20</u>
TOTAL	100

AWARD OF CONTRACT: On behalf of the VPSA Board of Commissioners (“Board”) Treasury staff shall initially rank each of the offerors in accordance with the above described point system. Based upon such ranking, Treasury staff shall select two or more Offerors deemed fully qualified, responsible and suitable on the basis of the proposals, and with emphasis on professional competence, to provide the above described legal services. Treasury staff shall thereafter arrange for interviews and discussions with the Offerors so selected before the Board.

At that stage, non-binding estimates of fees and the Offeror’s proposed fee structure on which such estimates are based will be requested for discussion purposes to the Treasury staff by each offeror so selected. Such non-binding estimates and fee structure shall specifically include any fees that will be charged by the Offeror in order to become knowledgeable about VPSA’s bond resolutions and documents and its programs and operations prior to the commencement of the above described legal services. Such estimates and fee structure shall be based upon a fixed schedule of fees during the initial term of the contract and shall be based upon an increase (if any) to such fixed schedule of fees during each of the additional renewals, which increases shall be in specified amounts or percentages or in amounts determined by reference to the Consumer Price Index or a comparable index.

Furthermore, at this stage, Treasury staff may obtain written and/or oral recommendations from one or more of the clients of each such Offeror listed as a reference in such Offeror’s proposal or otherwise identified therein or known to Treasury. Also, Treasury staff may require the Offeror to provide such additional information and documents, as Treasury may deem necessary or appropriate to conduct its review and evaluation of the proposal.

Upon conclusion of the above referenced interviews and discussions, the Board shall, on the basis of all of the evaluation factors described above point system, rank the Offerors who were so selected and shall, in the order ranking, select two or more Offerors for negotiation. The negotiations shall then be conducted, beginning with the Offeror ranked first. If a contract satisfactory and advantageous to VPSA can be negotiated with the Offeror ranked first at a price based upon a fee structure considered fair and reasonable VPSA shall award the contract to such Offeror. Otherwise, negotiations with such offeror shall be formally terminated, and negotiations shall be conducted with the Offeror ranked second and so on until the contract can be negotiated at a fair and reasonable price. The Board reserves the right to make multiple awards for co-bond counsel as a result of this solicitation. If co-bond counsel are engaged at any time the VPSA will delineate in the engagement letter the roles and responsibilities of each firm and assign discrete tasks to each firm.

SECTION VI: GENERAL TERMS AND CONDITIONS:

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- 1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals, offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
 - 1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

- 3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred

and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. OMITTED
- R. OMITTED
- S. OMITTED
- T. **INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and

completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - \$1,000,000 per occurrence.
 5. Professional Liability/Errors in Omissions – 1,000,000 per occurrence, 5,000,000 aggregate
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- X. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order

Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.

- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

Y. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

SECTION VII: SPECIAL TERMS AND CONDITIONS:

- A. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for [five (5) years] after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- B. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for 90 days. At the end of the 90 days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is cancelled.
- C. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract without cause, in part or in whole, without penalty, upon 30 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- D. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From _____	
Name of Bidder/Offeror	Due Date Time

Street or Box Number	RFP No.

City, State, Zip Code	RFP Title

Name of Contract/Purchase Officer or Buyer

The envelope should be addressed as directed on the Cover Sheet of the solicitation. If a bid/proposal not contained in the special envelope is mailed, the Bidder/Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid/proposal to be disqualified. Bid/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

- E. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for two additional one year terms, under the terms of the current contract, and at a reasonable time (approximately 30 days) prior to the expiration.
- F. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- G. **UNDERWRITING OF SECURITIES:** The Contractor, or any of its affiliates, may not submit a proposal to the VPSA or serve as a member of any syndicate or as a member of a selling group for the purchase of any securities described herein while they serve as financial advisor to the VPSA for the issuance of such securities.
- H. **DISCLOSURE:** The Contractor must disclose to the VPSA the names, role and compensation arrangements for any individuals or firms used by the firm, directly or indirectly, to obtain or retain municipal securities business which may relate to obligations issued by the VPSA. Further, the Contractor must disclose any relationship(s) which may be a conflict of interest for the firm serving as financial advisor to the VPSA.
- I. **TRANSFER OF NON-PROPRIETARY DATA:** The Contractor agrees to provide to the VPSA non-proprietary data compiled and/or maintained by the Contractor in electronic or other form (e.g., coverage tables) upon termination or expiration of the contract.
- J. **LATE PROPOSALS:** To be considered for selection, proposals must be received by the Department of the Treasury by the due date and time designated on the cover page of this RFP. Proposals received by Treasury after the due date and time are automatically disqualified and will not be considered. **Treasury is not responsible for delays in the delivery of mail by the U.S. Postal Service or private couriers. It is the sole responsibility of the Offeror to ensure that its proposal reaches Treasury by the designated due date and time.**
- K. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** It is anticipated that this contract will result in multiple purchase orders with the eVA transaction fee specified below assessed for each order.
 - a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.

- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov , streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

Commonwealth of Virginia
RFP #VPSA 08-007 for Bond Counsel Services
Due: April 21, 2008 1:00 p.m.

SECTION VIII: METHOD OF PAYMENT:

Invoices should provide a detailed description of the services provided, rates charges and amounts due. The VPSA will provide payment, subject to Section VI.Y. Availability of Funds, within 30 days from the date of receipt of the invoice and acceptance of services rendered.

Commonwealth of Virginia
RFP #VPSA 08-007 for Bond Counsel Services
Due: April 21, 2008 1:00 p.m.

SECTION IX: APPENDICES AND ATTACHMENTS:

APPENDIX A - Standard Contract
APPENDIX B - Small Business Subcontracting Plan

APPENDIX A

FORM OF COMMONWEALTH OF VIRGINIA CONTRACT

Appendix A represents the proposed Contract which the Commonwealth would expect the Contractor to sign.

Please note any suggestions or additions you would like considered.

COMMONWEALTH OF VIRGINIA
Department of the Treasury
FINANCIAL ADVISOR for the Virginia Public School Authority
Contract Number VPSA 08-007

This Contract is entered into this ___ day of ____, 2008, by_____, hereinafter called the "Contractor", and the Commonwealth of Virginia Department of the Treasury, hereinafter called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Commonwealth as set forth in the Contract Documents.

PERIOD OF CONTRACT: From _____, with the option to renew for two additional one-year terms under the terms and conditions stated herein.

CONTRACT DOCUMENTS: The Contract Documents shall consist of:

- (1) This signed Contract;
- (2) The following portions of the Request for Proposals dated _____:
 - (a) The Statement of Needs
 - (b) The General Terms and Conditions
 - (c) The Special Terms and Conditions, together with any negotiated modifications of those Special Conditions; and
- (3) The Contractor's proposal dated [XXXX ##, 20##] and all written modifications to the Proposal, all of which documents are incorporated herein.

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Commonwealth of Virginia's *Vendor's Manual*.

IN WITNESS WHEREOF the parties have caused this Contract to be duly executed intending to be bound thereby, and certify they are authorized to sign this Contract for the Contractor or the Commonwealth.

CONTRACTOR

PURCHASING AGENCY

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

APPENDIX B
SMALL BUSINESS SUBCONTRACTING PLAN

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

- _____ Small Business
- _____ Small and Women-owned Business
- _____ Small and Minority-owned Business

Certification number:_____Certification Date:_____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract

Totals \$					
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